IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8968 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJSHREE ENTERPRISE THRO'PROP. MADHU D. RAJPUT

Versus

G.E.B.

Appearance:

1. Special Civil Application No. 8968 of 2001

MR JA ADESHRA for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1-2,4

MR NK MAJMUDAR for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 05/08/2002

ORAL JUDGEMENT

1 Rule. Mr.N.K.Majmudar, learned Advocate appears and waives service of Rule. At the request of the

learned Advocates appearing for the respective parties, the matter is taken up for hearing.

2 The petitioner is a proprietory concern running Ice Factory. The contracted load that the petitioner was entitled to avail of was 60 HP, but on 10.10.2000 the checking squad of the respondent Board found that the petitioner was using additional load of 16.5H.P. and hence disconnected the power supply. The petitioner was issued two supplementary bills, both dated 10.10.2000 totalling to Rs.2,31,035.15. On 12.10.2000 the petitioner paid 50% of the supplementary bill and hence the power supply stood restored.

3 It is the case of the petitioner that the appeal was filed on 26.9.2001 but before that the petitioner received a communication dated 13.9.2001 stating that the appellate committee had decided the appeal of the petiioner and the petitioner was therefore directed to pay up the supplementary bill issued in relation to the balance amount payable after the decision of the appellate committee.

4 The case of the petitioner as presented by Mr.J.A.Adesara, learned Advocate for the petitioner is that even before the appeal was actually filed on 26.9.2001 the petitioner received the aforesaid communication dated 13.9.2001 stating that on the basis of oral representation made before the Appellate Committee a decision has been taken by the Appellate Committee against the petitioner.

5 When this petition came for hearing on 5.10.2001, this Court (Coram : Ms.Justice R.M.Doshit) passed the following order :

"Heard the learned advocate Mr.Adeshra.

Mr.Adeshra states that prior to 26th September,2001 the petitioner had not preferred any other appeal in the subject matter. Nonetheless, the respondent Board has sent communication dated 13th September,2001 informing the petitioner that the appeal preferred by the petitioner has been dismissed. Notice to the respondents returnable on 15th October,2001. Direct service is permitted.

Sd-/
(Ms.R.M.Doshit,J)"

6 Thereafter, the matter was adjourned from time to

time and on 8.4.2002 this Court (Coram : Mr.Justice D.H.Waghela) passed the following order :

"Ld. Counsel Mr.Majmudar seeks time to verify whether there are appeals filed on 17.10.2000 and whether appeals filed on 26.9.2001 (Annexure 'E') as contended by the petitioner are pending. S.O. to 18.4.2002. Interim relief to continue till then.

Dt.8.4.02. Sd/-
(D.H.Waghela,J)

7 Once again on 16.7.2002 this Court passed an order and the relevant portion thereof reads as under:

"On 5th October,2001, the Court directed issuance of notice on the limited ground that the petitioner had not preferred any appeal prior to 26th September,2001, and hence the respondents could not have sent any communication dated 13th September,2001 informing the petitioner that the appeal preferred by the petitioner has been dismissed. Thereafter, on 19th December,2001, the Court once again recorded the contention of the petitioner. Once again on 8th April,2002, the Court (Coram :Justice D.H.Waghela) passed an order in the following terms :

'Ld.Counsel Mr.Majmudar seeks time to verify whether there are appeals filed on 17.10.2000 and whether appeals filed on 26/09/01 (Annexure 'E') as contended by the petitioner are pending. S.O. to 18.4.02. Interim relief to continue till then.'

3. It is abundantly clear that the officers of the respondent-Board have not applied their mind to the orders passed by the Court from time to time and every time the advocate has been seeking time to verify whether the appeal has been filed prior to 26th September,2001, as contended by the petitioner. From the date the notice was issued, the matter has been adjourned atleast 15 times, and till today there is no response from the respondent Board.

4. In view of this situation, as a last opportunity, the respondent-Board is granted time to produce the original appeal memo before the Court on the next date of hearing.

5. S.O. to 23rd July,2002. Interim relief granted earlier to continue till the next date.

Sd/
(D.A.Mehta, J)"

8 Heard Mr.N.K.Majmudar, learned Advocate appearing on behalf of the respondent-Board. The case of the respondent Board is to the effect that on 17.10.2000 the petitioner submitted before the authority that he had paid 50% of the supplementary bill but as the said bill was not correct and the decision of the checking squad was also not proper he intended to represent before the Appellate Committee. Along with the said communication dated 17.10.2000 undertaking was also enclosed wherein once again the petitioner reiterated that he intended to represent before the Appellate Committee. Thereafter, it is stated that as the petitioner intends to obtain reconnection the petitioner is agreeable to pay 50% of the supplementary bill and upon such payment from the date of reconnection or from the date of the supplementary bill within the period of 30 days the objections in writing along with necessary documents shall be filed with the local office of the respondent Board, Sanand Sub-division. According to Mr.Majmudar these documents went to show that the petitioner had availed all the opportunities of making representation and as per condition no.34 or condition no.35 it was not necessary that any specific appeal memo should be filed which would permit the Appellate Authority to hear the appeal. He also referred to communication dated 18.7.2001 filed along with further affidavit dated 31.7.2002 in support of the contention that the respondent Board had given full and proper opportunity to the petitioner but the petitioner failed to avail of the said opportunity and the petitioner should not be heard to make any grievance before this Court merely because the decision of the Appellate Authority had gone against the petitioner.

9 Mr.Majmudar further contended that as laid down in condition nos. 34 & 35 of Condition and Miscellaneous Charges For Supply of Electrical Energy of respondent board what the consumer was required to do was file or make a representation before the appellate authority which has also been described as Review Committee of the Board and the said condition did not lay down any requirement of such representation being in writing.

10 Relevant extract from condition no.34 which deals

with payment of energy dishonestly used or abstracted or maliciously wasted or diverted is as under :

"34. Payment for energy dishonestly used or abstracted or maliciously wasted or diverted.

xxx xxx xxx xxx

Provided further that in the case of a consumer detected to have committed or to have been committing pilferage of energy , in addition to his liability to pay the amount towards the value of the electrical energy assessed to have been pilfered as computed in the manner specified hereinbelow (subject of course to the appeal to the Appellate Authority in regard to the quantum of energy so assessed), the power supply to such consumer shall be disconnected and shall be kept disconnected for a period of 30 days from the date of disconnection of power supply on the ground of pilferage of energy subject to review by the Review Committee of the Board or until a minimum amount specified hereinbelow is paid against the energy so assessed, whichever is later and the authority of such disconnection may be exercised by the Board at any time, but generally as soon as possible, after the detection of pilferage of energy. Subject to provisions of the second proviso hereinabove, when a consumer on first occasion is found wasting, directly using/abstracting/consuming energy dishonestly or maliciously, is aggrieved by the assessment made by the Board's officer in respect of the monthly quantum of energy deemed to have been consumed and/or the period considered therefor, he shall pay an amount equivalent to 15% of the value of the energy so assessed before the supply is reconnected. The another 15% of the amount of the supplementary bill shall be payable within 30 days of reconnection. Board shall process the party/consumer's appeal on payment of 15% amount. However, hearing shall be taken only after receipt of second installment. However, if the consumer on second or subsequent occasion is found wasting , directly using/abstracting/consuming energy dishonestly or maliciously he shall have to pay full amount of the energy so assessed before the supply is reconnected. Such consumer can represent his

case if he so desires within 30 days from the date of receipt of the assessment order or from the date of reconnection of power supply whichever is later, but in no case later than 90 days from the date of receipt of the assessment order, before the Appellate Authority appointed by the Board who after giving an opportunity to the consumer of being heard and producing all written and oral evidence in support of his representation will decide the appeal and the decison of the Appellate Authority in the Appeal shall be final and binding upon the consumer and he shall then pay the differential amount within 30 days from the date of communication of the order of the Appellate Authority failing which his supply is liable to be disconnected without any further notice."

11 Similarly relevant abstract of condition no.35 which deals with disconnection for malpractice and compensation thereof reads as under :

"35. Disconnection for malpractice and compensation thereof :

xxx xxx xxx xxx

Such consumer can represent his case if he so desires within 30 days from the date of receipt of assessment order or from the date of reconnection of power supply whichever is late, but in no case later than 90 days from the date of receipt of the assessment order, before the Appellate Authority appointed by the Board, who after giving opportunity to the consumer of being heard and producing all written and oral evidences in support of his representation, will decide the appeal and the decision of the Appellate Authority in the appeal shall be final and binding upn the consumer and he shall then pay the differential amount within 30 days from the date of communication of the order of Appellate Authority failing which his supply is liable to be disconnected without any further notice..."

12 On plain reading of the aforesaid provision it is apparent that both the conditions stipulate filing of appeal which may be termed as a representation.

Condition no.34 uses the word " appeal" at least at three places while the word "representation" is used at least at two places. The phrase "Appellate Authority" and "Review Committee" have been used interchangeably. The phrase "Appellate Authority" appears at least four times as against phrase "Review Committee" which appears only once. However, the later portion of condition no.34 is identically verbatim with the later portion in condition no.35. Both conditions envisage three distinct stages : Firstly, the representation by consumer; secondly, opportunity to the consumer of being heard, and thirdly, production of written and oral evidence in support of the representation. After these three stages are complete it is stipulated that the appellate authority will decide the appeal and the decision of the appellate authority in the appeal shall be final and binding upon consumer. Therefore, when one reads the provision as a whole it is apparent that the conditions require that some written material must be available before the appellate authority; it may be in the form of representation, it may be in the form of submission, it may be in the form of memorandum of appeal, but it is essential that there is some written document which gives indication that the consumer is aggrieved by the decision and such writing sets forth grounds or reasons for his dissatisfaction or grievance. The stage of hearing and production of evidence, oral or written is subsequent in point of time and cannot take place or cannot be substituted for the representation which forms the starting point of the appellate proceedings. Similarly, the payment of the stipulated percentage of the supplementary bill and giving an undertaking are prerequisite conditions for approaching the Appellate Authority and cannot take place of the appeal/representation which is a distinct and different requirement at a separate stage which can come only after the prerequisite conditions of stipulated payment having been made and undertaking having been executed are fulfilled.

13 In light of the aforesaid position in law the contentions raised on behalf of the respondents may be examined. In the affidavit-in-reply dated 7.12.2001 it is stated that "petitioner preferred two appeals before the appellate committee on 17.10.2000. Annexed hereto and marked as Annexure "I" is a copy of the said appeal as well as undertaking given by the petitioner to the G.E.B. which would substantiate the say of the G.E.B." On examination of the said annexure to which reference is made it is apparent that the first communication dated 17.10.2000 is neither an appeal memo nor a representation nor a written submission which contains any of the

grounds on which the issuance of the supplementary bill is attacked by the petitioner. The said communication only states that the supplementary bill issued is not logical and the decision of the checking squad is not proper and hence the petitioner intends to represent before the Appellate Committee. On overall reading of the said communication dated 17.10.2000 it transpires that the same does not go beyond declaration of intent : mainly an intent that the petitioner desires to present his case before the Appellate Committee. Even the undertaking which is annexed with the said communication does not go beyond what is stated in the communication. Infact, the said undertaking specifically states that the objections regarding supplementary bill shall be presented in writing along with necessary documents before the local office of the Board i.e. Sanand Sub-division.On a combined reading of both the documents on which great reliance has been placed by the respondent is is apparent that the petitioner has only made a statement to the effect that he shall present his case in writing before the Appellate Committee. From the language employed in communication dated 17.10.2000 and the undertaking it is not possible to agree with contention of the respondents that it conveys the meaning of being an appeal or representation or submission.

14. In the further affidavit dated 31.7.2002 the respondent Board has placed its case thus :

"It is stated that for hearing the Appeal there is no necessity that there should be a detailed Appeal Memo and unless there is an Appeal Memo Appeal cannot be heard ..."

In support the respondent has stated that a communication was also sent on 18.7.2001 informing the petitioner that the hearing was to take place before the Appellate Authority on 24.7.2001 and that the petitioner should keep ready and produce whatever documentary evidence the petitioner wanted to rely upon in support of his appeal before the appellate authority.

15 As already seen neither condition no.34 nor condition no.35 of the conditions provide that no appeal is required, or that no representation or submissions in writing are required. To the contrary, as already stated hereinbefore , the indication is otherwise. In absence of any written material before the Appellate Committee it is beyond comprehension as to how the Appellate Committee

can deal with the matter by stating that it is deciding an appeal. At the cost of repetition it is necessary to state language employed in condition no.34 and 35, "will decide the appeal and the decision of the appellate authority in the appeal shall be final and binding". The concept 'Appeal' in ordinary language means make an earnest or formal request, plea; other meaning is to be attractive or of interest; the third meaning is to resort to or cite for support; and the last meaning as used in cricket : call on the umpire for a decision on whether a batsman is out. However, the meaning in legal parlance means apply to a higher forum for reconsideration of decision of a lower court. The meaning of 'appeal' in the present circumstance has to be adopted as understood in legal parlance and if it is so adopted, it has a definite connotation which requires some grounds of appeal or reasons in support of the appeal, which form the basis for challenging the decision of a lower forum. Admittedly, there is no dispute between the parties that, in the present case appeal memorandum was not presented before 23.9.2001. In these circumstances, the Appellate Committee could not have decided any appeal prior to the said date.

16 There is one more aspect which requires to be borne in mind. It is extremely necessary that there is some written material with the Appellate Committee before it renders its decision. This is to safeguard interest of Appellate Committee, as otherwise its decision would become liable to challenge as being arbitrary, the decision having been arrived at without taking into consideration various oral contentions raised before it, etc.; and in these circumstances, it would not be possible for the Court to state with certainty as to whether a particular contention was raised or not and whether the Appellate Committee was called upon to to decide such an issue. Even the respondent Board would not be in a position to defend the order of the Appellate Committee in absence of such material. Therefore, in the interest of fair play and justice and for establishment of transparency of proceedings it is necessary that an appeal before the Appellate Committee by whatever name called is submitted in writing by aggrieved person.

17. Therefore, on overall consideration it is not possible to accept the stand of the respondent that an appeal could be oral without there being any written material on record. The letter dated 13.9.2001 along with the order dated 24.7.2001 and consequential supplementary bills are hereby quashed and set aside. The petitioner is relegated to the Appellate Authority.

The Appellate Authority is directed to decide the appeal filed by the petitioner on 26.9.2001 on merits after giving full and proper opportunity of hearing to the petitioner without being influenced by its earlier order.

18. The petition is accordingly allowed. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

m.m.bhatt